IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 105 of 2005

Between:

Yeruva Jojireddy, S/o. Balireddy,
Ankireddyopalli Village, Kolimigundla Mandal, Kurnool District.

..... PETITIONER

AND

1 The District Collector, Kurnool District, Kurnool.
2 The Asst. Director, Minies & Geology, Kurnool.
3 The Mandal Revenue Officer, Kolimigundla Mandal, Kolimigundla, Kurnool District.
4 G. Eswara Reddy, S/o. Sivareddy,
Ankireddipalli Village, Kolimigundla Mandal, Kurnool District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an appropriate Writ, Order or direction more particularly in the nature of writ of Mandamus declaring the action of the 2nd respondent in issuing the Proceedings NO.204/M4/2001 dt. 10.12.2002 in granting the mining lease in favour of the 4th respondent in respect of Ac.5.00 cents in Sub.Devided Sy.No. 1260 in Sy.No.822 of Petnikota Village, Kolimigundla Mandal, Kurnool District as illegal, arbitrary and violative of mandatory provisions of A.P. Minor Mineral Concession Rules, 1966 and consequently direct the respondents not to interfere with the peaceful possession and enjoyment of the land Ac.5.00 cents in Sub. Devided Sy.No.1260 in Sy.No.822 of Petnikota Village, Kolimigundla Mandal, Kurnool District.

Counsel for the Petitioner:MR.C.B.RAM MOHAN REDDY

Counsel for the Respondent 1 AND 3 No.: GP FOR REVENUE

Counsel for Respondent NO. 2: G.P. FOR INDUSTRIES

Counsel for Respondent NO.4: K. Rathanga Pani Reddy

The Court made the following :

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ORDER:

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1. This writ petition is filed by Yeruva Jojireddy, an ex-serviceman, with a prayer to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 2nd respondent in issuing the Proceedings No. 204/M4/2001, dated 10-12-2002 in granting the mining lease in favour of the 4th respondent in respect of Ac. 5-00 in Sub-divided Sy.No.1260 in Sy.No.822 of Petnikota village, Kolimigundla Mandal, Kurnool District as illegal and arbitrary.

2. The case of the writ petitioner as set out in the affidavit filed in support of the writ petition is:-

The petitioner joined in army in the year 1975 and served till 30-9-1996. He has been assigned Ac. 5-00 out ofAc. 126.37 cents in Survey No. 822 of Petnikota village, Kolimigundla mandal, Kurnool District. The land assigned to him has been sub-divided and given Sy.No1260. He was also issued D-Form patta in R.Dis.No.DAR 1/92, dated 4-9-1992, title deed and pattedar pass book bearing No. P.289174. The Government of Andhra Pradesh permitted Ex.Servicemen to sell away the assigned land after a period of ten years vide G.O.Ms.No.1117 issued by Revenue (Assignment-I)Department, dated 11-11-1993. While so, one G.Eswara Reddy-4th respondent was granted lease to quarry the land admeasuring Ac. 10-00 cents in Survey No.822 of Patnikonda village, Kolimigundla Mandal, Kurnool District. The land given to G.Eswara Reddy overlap the assigned land. The petitioner has taken various steps by way of approaching the Revenue Authorities for deletion of his land and to cancel the quarry lease to the extent of assigned land. Since there was no response from Mandal Revenue Officer, Kolimigundla, he made representation to the grievance cell, Collector's office, Kurnool. Aggrieved by the inaction of the District Collector, Kurnool, he filed this writ petition seeking the relief stated supra.

3. Respondents 1 and 3 filed counter affidavit. One M.Sankarappa has sworn to the counter-affidavit. It is stated in the counter affidavit that an extent of Ac. 5-00 in Survey No. 822 of Petnikota village has been assigned to the petitioner, as per order in R.Dis.DAR/92, dated 4-9-1992. Pattedar passbooks and the title deeds were also issued to the writ petitioner in respect of the assigned land. A letter was addressed to the Assistant Director of Mines and Geology to know the actual facts in Rc.A/1123/04, dated 8-11-2004. The Assistant Director of Mines and Geology has also replied it on 16-11-2004 wherein he stated that the Mining of the lands cover the assigned land. He further stated that a notice was issued to the petitioner to appear for the enquiry. Both of them have appeared and have given statements. While, the matter was under consideration the petitioner has approached to this Court by way of writ petition.

4. Respondent No.2 also filed counter affidavit. One A.Satyanarayana has sworn to the counter affidavit. It is stated in the counter affidavit that the 1st respondent-District Collector, Kurnool issued Lr.Rc.No. E7/286/2005 dated 17-5-2005 directing the 2nd respondent to cancel the quarry lease granted to G.Eswara Reddy-4th respondent in Sy.No.822 of Petnikota village as it is covering the assigned land pertaining to the petitioner in Sy.No.1260 over an extent of Ac. 5-00 (sub-divided original Sy.No.822). In turn the 2nd respondent herein vide letter No.71/M4/03, dated 28-5-2005 addressed to the first respondent herein requested to delineate the petitioner's assigned land of Ac. 5-00 from the leased area of respondent No.4 herein, which is over an extent of Ac.10-00 to withdraw the assigned part of the said Sy.No.822, so that the remaining part of the lease area can be retained by respondent No.4. The said proposals are pending before Respondent No.1 for consideration.

5. 4th respondent filed counter affidavit resisting the writ petition. The sum and substance of the counter affidavit of the respondent No.4 is that 2nd respondent having granted lease, cannot cancel the lease, detrimental to his interest.

6. Heard Sri C.B. Rama Mohan Reddy, the learned counsel for the petitioner and learned Government Pleader for Revenue appearing for the respondents No.1 and 3 and the Standing counsel for Mines and Geology appearing for the 2nd respondent and Sri K.Rathanga Pani Reddy, learned counsel appearing for 4th respondent.

7. C.B. Rammohan Reddy, learned counsel appearing on behalf of the petitioner

submits that the lease cannot be granted for the purpose of mining without the consent of the land owner. He placed reliance on a decision of the Supreme Court in ***Pallava Granites Industrial India (P) Ltd., Vs. Govt. of A.P.*** and a decision of Division Bench of our High Court in ***Shri BhargaviGranites Industries Pvt. Ltd., Vs. Govt. of India*** It is also submitted by him that the leased land of the 4th respondent overlaps the assigned land and therefore, to the extent of the assigned land, leased in favour of the 4th respondent is required to be cancelled.

8. Learned Government Pleader appearing for respondents 1 and 3 submits that necessary instructions have been issued to the Assistant Director of Survey and Land Records to survey the land in S.No. 822 which has been assigned to the writ petitioner and report on an early date, so as to enable the respondents to take further action and therefore, the writ petition is premature and the same is liable to be dismissed.

9. It is contended by the learned counsel appearing on behalf of the 4th respondent that lease once given cannot be cancelled and therefore, the writ petition is liable to be dismissed.

10. The simple question involved in this case is whether the land leased to the 4th respondent covers the assigned land?

11. It appears the District Collector addressed a letter to the Assistant Director of Mines and Geology on 17-5-2005 directing him to cancel the mining lease to an extent of assigned land. I deem it appropriate to refer the relevant portion of the letter dated 17-5-2005:

> *"I invite your attention to the reference 1st cited, whrein you have granted lease to Sri G. Eswara Reddy of Petnikota village over an extent of 4-047 hectors. The mining lease granted covers in the assigned land pertaining to Yeruva Joji Reddy, Ex.Serviceman in Sy.No. 1280 extent 5-00 (sub-divided from original Sy.No.822) who is having pattadar pass book also. Hence, you are directed to cancel the mining lease, which was given to Sri G.Eswar Reddy in the Sy.No.822 of Petnikota village.*

12. The Assistant Director of Mines and Geology in pursuance of the letter dated 17-

5-2005 of the Collector and District Magistrate, Kurnool, responded under letter No.71/M4/2003, dated 28-5-2005 where under the Assistant Director of Mines and Geology, Kurnool requested the District Collector to review the matter and issue necessary direction for delineating the assigned land of the petitioner from the leased area through Mandal Revenue Officer, Kolimigudla, so that the remaining portion of the leased area can be retained to existing lease holder G.Eswar Reddy-4th respondent.

13. What is required to be done by the 1st respondent and his authorities is to clarify whether the assigned land is part and parcel of the leased lands. After necessary identification, the 2nd respondent-Assistant Director of Mines and Geology has to take necessary steps in accordance with the provisions of the A.P.M.M.C. Rules, 1966, with regard to the cancellation of the lease in respect of the assigned land.

14. Accordingly, the writ petition is disposed of. The respondents 1 and 3 have to get the assigned land identified within two months from the date of receipt of a copy of this order and thereafter the 2nd respondent shall pass appropriate orders with regard to the cancellation of the leased in favour of the 4th respondent in accordance with the provisions of the A.P. Minor Mineral Concession Rules, 1967 and the other rules/regulations operating the field. No order as to costs.

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B.Seshasayana Reddy, J.

20th June, 2005.

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The District Collector, Kurnool District, Kurnool.
2 The Asst. Director, Minies & Geology, Kurnool.
3 The Mandal Revenue Officer, Kolimigundla Mandal, Kolimigundla, Kurnool District.
4. 2 Ccs to G.P. for Revenue, High Court Buildings, Hyderabad (OUT)

5. 2 CD copies

6. 2 CCs to G.P.for Industries, High Court Buildings, Hyderabad (OUT)

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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